

Message

From: Rodriguez, Alejandra [rodriguez.alejandra@epa.gov]
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Daily News Clips

June 13, 2019

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Chemicals

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INSIGHT: How Firms Can Prepare for and Participate in EPA Chemical Prioritization

<https://news.bloombergenvironment.com/environment-and-energy/insight-how-firms-can-prepare-for-and-participate-in-epa-chemical-prioritization>

Gavin Thompson, David K. Liu

EPA is forming its approach to prioritizing chemicals for evaluation and possible regulation. Companies should consider how other countries and jurisdictions are prioritizing chemical substances in submitting their comments to the EPA.

The U.S. Environmental Protection Agency is making significant progress implementing the Frank R. Lautenberg Chemical Safety for the 21st Century Act (LCSA), which amended the Toxic Substances Control Act (TSCA).

In 2017, EPA promulgated a final rule under TSCA Section 6(b)(1) to establish the process and criteria it will use to identify existing chemical substances—those currently in commerce—as either “high-priority” for risk evaluation or “low-priority” for which risk evaluations are not warranted.

On March 21, EPA published a list of 40 chemicals which activates a statutory requirement for the agency to complete the prioritization process for 20 high-priority substances and 20 low-priority substances by December.

The 90-day comment period on EPA’s proposed selections expires on June 19.

EPA Prioritization of Chemicals

EPA’s 20 high-priority candidate substances include seven chlorinated solvents, six phthalates, four flame retardants, formaldehyde, a fragrance additive, and a polymer precursor.

EPA’s 20 low-priority candidate substances consist primarily of alcohols, esters, and carboxylic acid and salts, all from EPA’s Safer Chemical Ingredient List (SCIL).

According to the its guidelines, EPA screens a chemical substance for prioritization under its “conditions of use” against the following criteria:

- (1) hazard and exposure potential of the chemical substance;
- (2) persistence and bioaccumulation;
- (3) potentially exposed or susceptible subpopulations;
- (4) storage near significant sources of drinking water;
- (5) conditions of use or significant changes in the conditions of use of the chemical substance; and
- (6) volume or significant changes in the volume of the chemical substance manufactured or processed.

“Conditions of use” means “the circumstances, as determined by the Administrator, under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used or disposed of.”

In identifying this first batch of candidate substances for prioritization, TSCA/LCSA requires that EPA select 50% of the high-priority substances be drawn from the 2014 update to the TSCA Work Plan for Chemical Assessments.

EPA gives preference to work plan chemicals with the following characteristics: (1) highest persistence and bioaccumulation ranking; (2) known human carcinogens; or (3) high acute or chronic toxicity.

What Can Firms Do at This Time?

Companies that manufacture or import a high-priority candidate chemical should consider working with downstream processors and users to gather and develop substantive technical comments related to the hazard characteristics, distributions and end uses, and potential exposure and release scenarios of the substance.

While companies may be concerned about the confidentiality of the submitted information, especially hazard and toxicity data, there are means to keep the source of the data confidential under TSCA Section 14.

Of particular interest to the EPA for this prioritization process are studies that don't show a substantial risk (i.e., those that are not required to be submitted under TSCA Section 8(e)). Such data could change the perceived hazard of a substance, lower its priority for re-evaluation, and affect the results of subsequent risk evaluation and management decisions by EPA.

Industry data that show the current commercial uses of a substance do not result in significant releases or exposures are also of interest as these may also alter the EPA's risk evaluation and decisions.

Trade Groups Can Help

Trade associations can facilitate and coordinate the gathering of use, release, exposure, hazard, and toxicity data and make public comments. They can also remove company- and customer-identity information before submitting comments to EPA to protect sensitive information.

The objective of such comments is to demonstrate to the EPA why the candidate substance meets safety standards or doesn't pose unreasonable risk under its current and anticipated commercial use conditions.

The information submitted by companies and trade associations also can help the EPA reach scientifically sound decisions on risk evaluations of the priority substances, while preparing industry to challenge the agency later should its modeling and characterization of conditions of use and exposures be at odds with the actual conditions and scenarios submitted by manufacturers.

For low-priority substances, companies should consider whether they could influence EPA's prioritization process by volunteering to develop information that can be used to identify candidates that may be designated as low-priority substances.

To do so, companies will need to understand and use the screening tools and data sources used by the EPA to estimate hazard, release, and exposure parameters.

Companies should also familiarize themselves with how other countries and jurisdictions are prioritizing chemical substances for risk evaluations.

For example, under its Chemical Management Plan (CMP), Environment and Climate Change Canada has placed high-priority petroleum substances into one of five categories—streams—for prioritization purposes, depending on their production, distribution, and scenarios in Canada.

In the European Union (EU), the European Chemicals Agency (ECHA) has mapped all registered substances above 100 metric ton per year and sorted them into four categories:

- (1) high-priority for risk management;
- (2) high-priority for data generation;
- (3) low-priority as already sufficiently regulated; and
- (4) low-priority after assessment.

Companies should evaluate the criteria developed by other countries and jurisdictions for prioritization and incorporate the most appropriate criteria into the EPA's information development and prioritization process. For example, companies can recommend to the EPA that candidate chemicals under existing regulatory controls should be considered low-priority.

Companies also should assess which chemicals are designated as low-priority in other countries and jurisdictions to support their low-priority designation requests to EPA.

Business Insider

An environmental watchdog found traces of weed-killer in Cheerios and Nature Valley products. Here's how worried you should be.

<https://www.businessinsider.com/glyphosate-herbicide-in-cheerios-cereal-2019-6>

Aria Bendix

Cereals and oat bars generally aren't the healthiest option for breakfast due to their high concentrations of sugar and corn starch, but there's now reason to believe they carry traces of weed-killer.

For months, the watchdog Environmental Working Group (EWG) has been testing breakfast foods for glyphosate, the most widely used agricultural pesticide in the world.

Their latest analysis found traces of the weed-killer in 6 types of Cheerios, 14 Nature Valley products, and Fiber One's oatmeal raisin soft-baked cookies. The company conducted two similar rounds of tests in August and October of last year, which found glyphosate in dozens of oat-based products from companies like Quaker, Kellogg's, and General Mills.

Though the EWG is raising the alarm about these foods, we don't yet know whether glyphosate is actually linked to cancer. As it stands, most published research has found that glyphosate isn't a health threat at the low levels to which consumers are exposed.

The words "cancer-causing chemical" may hold an alliterative charm, but determining whether a chemical actually causes cancer is a difficult task.

Much of the evidence suggesting that glyphosate may be carcinogenic, or cancer-causing, comes from a 2015 report published by the World Health Organization's International Agency for Research on Cancer (IARC). The report gave glyphosate a "Group 2A" classification, which means it is "probably carcinogenic in humans." The label is often used for chemicals showing strong evidence of carcinogenicity in animals, but limited evidence in humans. Other chemicals belonging to this group include acrylamide, a chemical found in burned, charred, and toasted foods.

In its analysis of more than 900 chemicals, the IARC has only classified one of them as non-carcinogenic. Five hundred more have been deemed "not classifiable" as carcinogens.

The IARC's analysis of glyphosate has fallen under scrutiny after an extensive Reuters review found that the agency had edited parts of the material that didn't align with its conclusion. When Business Insider spoke with Alex Lu, a Harvard environmental exposure professor, last year, Lu said the IARC was a "world-renowned and reputable" institution whose findings have benefited global cancer researchers.

But theirs was not the only study to detect a link between glyphosate and cancer.

Earlier this year, a meta-analysis from scientists at the University of California Berkeley, University of Washington, and Mount Sinai found "a compelling link" between glyphosate exposure and a cancer called non-Hodgkin's lymphoma.

Bayer, the company that owns Monsanto (which is behind the popular herbicide, Roundup, that uses glyphosate as the active ingredient), has called the meta-analysis "a classic case of garbage in, garbage out." The company accused the analysis of cherry-picking data, manipulating statistics, and making unfair comparisons.

But in April the US Agency for Toxic Substances and Disease Registry (ATSDR) also said they couldn't rule out an association between glyphosate and non-Hodgkin's lymphoma, even though most studies had not discovered a link. The ATSDR determination was put on hold for many years as Monsanto attempted to curtail its release. Court-released documents show evidence that Monsanto coordinated with the US Environmental Protection Agency (EPA) to keep the paper from going public.

"Don't get your hopes up, I doubt EPA and [former EPA official Jess Rowland] can kill this; but it's good to know they are going to actually make the effort now to coordinate," Dan Jenkins, a Monsanto regulatory affairs manager, wrote in an email to his colleague.

As far as the EPA is concerned, glyphosate is not a public health risk. Their stance is backed by other regulatory agencies including the European Commission, Canada's Pest Management Regulatory Agency, and the World Health Organization's International Program on Chemical Safety. A 2018 study supported by the National Cancer Institute also found no association between glyphosate and non-Hodgkin's lymphoma, but it did find "some evidence" of a higher risk of leukemia among participants with the most exposure.

Further independent studies could shed light on these findings, but for now the link between glyphosate and cancer remains tenuous.

The EWG considers any cereal with a glyphosate level of more than 160 parts per billion to be unsafe. That threshold is nearly nearly 188 times as stringent as the legal limit for oats set by the EPA.

When Business Insider spoke with Tasha Stoiber, a senior scientist at the EWG, in 2018, she said it was "standard scientific practice" to enforce stricter limits for children, "since children have an increased susceptibility to cancer-causing substances."

Having conducted his own research of pesticides in children's diets, Lu said he believed the EWG's safety measures were relatively conservative and that its threshold might even be "too high."

"This is especially true for parents buying breakfast cereals for their infants and children," said Lu, who is not affiliated with the EWG, though it has covered his findings in the past.

In the EWG's latest round of tests, the items with the highest recorded levels of glyphosate were Honey Nut Cheerios Medley Crunch (833 parts per billion) and Cheerios Toasted Whole Grain Oat Cereal (729 parts per billion). That's far below the EPA's legal limit for oats of 30,000 parts per billion.

When asked about the EWG's findings, Bayer said the group "has a long history of spreading misinformation about pesticide residues."

"Even at the highest level reported by the EWG (833 parts per billion), an adult would have to eat 158 pounds of the oat-based food every day for the rest of their life to reach the strict limits set by the EPA," the company told Business Insider.

In a statement, General Mills — which produces Cheerios, Nature Valley, and Fiber One products — said its top priority is food safety. "Most crops grown in fields use some form of pesticides and trace amounts are found in the majority of food we all eat," the company told Business Insider. "We continue to work closely with farmers, our suppliers, and conservation organizations to minimize the use of pesticides on the ingredients we use in our foods."

Lawsuits are accusing Monsanto's Roundup of giving people cancer

Monsanto Roundup cancer legal battle trial jury court case plaintiff.JPG

Plaintiff Dewayne Johnson used Roundup as a groundskeeper in a California school district. He later developed non-Hodgkin lymphoma. Josh Edelson/Reuters

While some consumers may be worried about ingesting weed-killer, the bigger concern for Bayer is the spraying of Roundup. More than 13,000 plaintiffs have filed claims against Monsanto, alleging that their use of the product gave them cancer. The overwhelming majority of these plaintiffs have claimed that Roundup causes non-Hodgkin's lymphoma.

On May 13, a California jury ordered Monsanto to pay \$2 billion in damages to a husband and wife, Alva and Alberta Pilliod, who each developed non-Hodgkin's lymphoma after using Roundup for 35 years. Bayer plans to appeal the verdict.

"We have great sympathy for Mr. and Mrs. Pilliod, but the evidence in this case was clear that both have long histories of illnesses known to be substantial risk factors for non-Hodgkin's lymphoma," the company told Business Insider.

The Pilliod case follows two other Roundup-related verdicts.

In August 2018, a California jury ordered Monsanto to pay \$78.6 million in damages to a groundskeeper, Dewayne Johnson, who attributed his non-Hodgkin's lymphoma to Roundup. The judge ruled that Monsanto had intentionally withheld information about Roundup's potential harm, but did not make any claims about whether it contributed to the plaintiff's cancer.

A few months earlier, a federal jury ruled that Roundup was a "substantial" contributor to 70-year-old Edwin Hardeman's non-Hodgkin's lymphoma diagnosis. Hardeman had used the weed-killer to tend his property for more than two decades. The jury has since ordered Monsanto to pay Hardeman \$81 million for failing to warn about the the product's risk.

The verdicts reflect the court's decision rather than a scientific determination, but they do lend an urgency to new research. Several studies of glyphosate and cancer (typically in mice) are ongoing, and more are coming out each year.

Coal

Greenwire

TVA to remove 12M cubic yards from pits near Tenn. River

<https://www.eenews.net/greenwire/stories/1060571539/search?keyword=EPA>

Travis Loller, Associated Press

The nation's largest public utility today agreed to dig up and remove about 12 million cubic yards of coal ash from unlined pits at a Tennessee coal-burning power plant.

Prompted by two environmental groups, the state sued the Tennessee Valley Authority in 2015 over pollution from coal ash dumps at the Gallatin Fossil Plant. State officials say in court documents that pollutants leach from the ash into the groundwater and then enter the Cumberland River, a source of drinking water for Nashville.

The Tennessee Department of Environment and Conservation and the environmental groups announced a settlement with TVA today. The utility has agreed to excavate the majority of the coal ash stored at Gallatin and recycle it or remove it to a lined, permitted landfill. It will also develop a plan for dealing with pollution from ash remaining on site.

TVA, which provides power to more than 10 million people in parts of seven Southern states, has recently come under increased scrutiny for its handling of coal ash, the byproduct of burning coal for power.

EPA began looking into regulating coal ash after an impoundment failed at another TVA plant in Kingston, Tenn., spilling 5.4 million cubic yards of ash into the Emory River and surrounding community.

Workers involved in cleaning up that spill have sued the contractor that TVA hired to manage the job, claiming chronic exposure to the ash sickened and even killed some workers. The parties have been ordered by the judge to try to mediate a settlement.

EPA released regulations in 2015 that treat coal ash more like household garbage than a hazardous material.

TVA has said it is dewatering all its existing coal ash dumps to help prevent leaching, but the utility has resisted calls to remove ash to lined landfills.

The settlement over the Gallatin ash is subject to a 30-day public comment period and the approval of the judge overseeing the case.

EPA Policy

Bloomberg Environment

Trump Tries to Follow the Rules to Win on Deregulation

<https://news.bloombergenvironment.com/environment-and-energy/trump-tries-to-follow-the-rules-to-win-on-deregulation>

Kartikay Mehrotra

White House opts for transparency, public participation in federal rule-making

New tact could mean extra scrutiny of assertions about pollution risks, carbon and climate change

Phase 1 of President Donald Trump's environmental deregulation agenda lasted two largely unsuccessful years. One by one, his climate proposals were crushed by legal challengers who convinced judges that the administration failed to abide by established policy making procedures.

Illustration: Thomas Colligan for Bloomberg Businessweek

Trump has so far attempted to deregulate by cutting corners: postponing compliance dates on Obama-era norms or suspending rules "pending reconsideration."

A new wave of finalized deregulatory measures is set to roll out beginning later this month, including guidelines for vehicle emissions standards, clean water policies, and raised caps for greenhouse gas emissions from power plants. This time around, the president and his team seem to have discovered a secret weapon that could threaten the pristine record earned by their environmental opponents: playing by the rules.

An early Trump executive order directed agencies to get rid of "unnecessary regulatory burdens." Many attempts to comply with the order violated provisions of the Administrative Procedures Act, which requires transparency and public participation in federal rule-making.

"Now the agencies are dotting their i's and crossing their t's to make sure there's adequate justification for any new rules," said Robert Abbey, a lawyer and a director of the Bureau of Land Management under President Obama.

"Determining whether that justification is lawful takes a lot of time. In the meantime, the final rule is the rule. That appears to be the strategy here."

Judges Will Decide

This time around, the legal jousting over Trump's push for looser standards will shift to the substance of his deregulation agenda. Judges in the legal challenges that will inevitably result must decide whether these rollbacks and revisions comport with underlying statutes.

That involves determining whether the Trump administration has done enough to justify them. And that means extra scrutiny of assertions about the health risks of pollution—or lack thereof—and the climate consequences of carbon dioxide emissions.

“To unwind what Obama did, you have to find some way to undermine tons of science and facts that were put before agencies,” said Abigail Dillen, president of Earthjustice, an environmental law advocacy group. “It’s very hard to substantively justify this entire deregulatory agenda.”

Trump has repeatedly called environmental standards an economic burden. And while the White House released a statement on Earth Day this year saying, “environmental protection and economic prosperity go hand in hand,” even its nonderegulation agenda remains skeptical of climate change.

Pushback on Environmental Issues

Starting with a vow to pull the U.S. out of the Paris Agreement in 2017, Trump officials have consistently halted or impeded efforts to address environmental issues, most recently ordering the U.S. Geological Survey to stop all climate projections at the year 2040 instead of 2100. Scientists say the most telling impacts of fossil fuel emissions won’t become evident until after 2040.

The administration’s frequent opponents in court include Earthjustice, the Sierra Club, and state attorneys general from New York to New Mexico. California Attorney General Xavier Becerra so far has amassed one of the best records, defeating 14 Trump administration deregulation measures. “I suspect President Trump considers facts unfriendly—and it’s an unfortunate thing, because they can be stubborn,” he said.

The Sierra Club has received funding from Bloomberg Philanthropies, the charitable organization founded by Michael Bloomberg. Bloomberg Environment is operated by entities controlled by Michael Bloomberg.

Of Becerra’s victories against the president’s deregulation measures, one of the first decided on the substance of the policy was a lawsuit challenging the Department of the Interior’s attempt to repeal the valuation rule, an Obama-era reform affecting coal, oil, and gas companies.

These companies pay royalties to the federal government on the value of the material they extract from federal land; prior to the 2016 rule, that value was often calculated based on a transaction with a subsidiary, which could be priced as low as the company wanted. The valuation rule required that they base these royalty payments on a transaction with an unaffiliated third party, which would prevent them from artificially reducing the size of the royalty payments.

After complying with public comment requirements, the department declared in early 2017 that the regulation was too “challenging” to enforce and would “unnecessarily burden” companies operating on public lands, even though an Obama administration report had found that the underpayments cost taxpayers about \$17 million a year.

A federal judge in Oakland, Calif., rejected the department’s argument in March 2019, finding that the new justification directly contradicted the Obama administration’s findings and that policymakers at Interior had failed to explain the discrepancy, making the proposed rule change legally unjustifiable.

Interior, EPA Tumult

The past two years have been tumultuous at both Interior and the Environmental Protection Agency. Trump’s original choices to lead the agencies were each forced to resign after allegations arose that they’d improperly used government funds. A new EPA administrator, Andrew Wheeler, was confirmed in February, and David Bernhardt was installed as Interior secretary in April, which could mean a renewed effort to roll back regulations. Neither agency responded to requests for comment.

The Bureau of Land Management’s attempts to unravel Obama’s methane waste rules, which required oil companies to repair leaks of the potent greenhouse gas, could provide a road map for the legal journey ahead.

The agency's first two attempts to postpone or suspend portions of the rule were swiftly defeated by California after the bureau skipped the public comment process. The third try went through the formal rule-making channels and attracted 220,000 comments, yielding a final regulation that met all basic public notification requirements. The two-year process upended the six-year investment in changing the rule made by the Obama administration.

Becerra has filed suit in federal court to strike down the law, arguing that Trump's agencies have failed to justify the reform, but the case won't be heard until next January. Until then, the Trump rule stands.

Politico Pro

EPA enforcement plan drops major source focus, targets defeat devices

<https://subscriber.politicopro.com/article/2019/06/epa-enforcement-plan-drops-major-source-focus-targets-defeat-devices-3415603>

By Alex Guillen

EPA will end a 20-year-old enforcement initiative for air pollution from power plants and industrial facilities, according to the final version of the agency's special compliance plans through 2023 that was publicly released today.

The agency said in its response to public criticisms that emissions of sulfur dioxide and nitrogen oxide have plummeted over the past two decades even as electricity generation increased. EPA can still target individual violators, but the agency said dropping the initiative reflects longer-term focus on other problem areas.

In addition, EPA said it will add a new initiative at the suggestion of public comments targeting aftermarket defeat devices for vehicles.

Unlike software defeat devices, such as the coding used by Volkswagen to cheat on emissions testing, aftermarket devices are equipment that can be installed on vehicles after manufacture that improve engine performance by bypassing pollution controls. EPA has stepped up enforcement of this technology in recent years, including an action in 2016 against Harley-Davidson.

EPA also adopted new initiatives on community water systems' compliance with drinking water standards. Another proposed initiative on childhood lead exposure will be folded into EPA's broader lead action plan.

EPA will also continue initiatives focused on hazardous air pollutants such as volatile organic compounds; pollution from hazardous waste facilities; National Pollutant Discharge Elimination System permits; and accidental releases at chemical facilities.

Natural Disasters

E&E News

FEMA nominee pledges to enhance workforce

<https://www.eenews.net/eedaily/stories/1060565149/search?keyword=EPA>

Niina H. Farah, E&E News reporter

President Trump's nominee to lead the Federal Emergency Management Agency said addressing the needs of the agency's disaster response workforce would be a top priority if he is confirmed by the Senate.

Jeffrey Byard told members of the Senate Homeland Security and Governmental Affairs Committee that the agency is working through a "tremendous workload" of 61,000 project worksheets.

FEMA is working on recovery efforts for more than 700 disasters nationwide, some dating back nearly 20 years.

Byard said he would seek to promote, retrain and recruit people to FEMA from "underrepresented" populations, and ensure a "diverse workforce" to help aid the communities FEMA serves.

His remarks came hours after lawmakers in the committee pressed FEMA's acting administrator on whether the agency is prepared to respond to new disasters this hurricane season. The committee is scheduled to vote on Byard's nomination Wednesday.

Acting FEMA Administrator Peter Gaynor assured lawmakers the agency was ready to take on new recovery efforts despite gaps in staffing and praised Congress for enabling more pre-disaster mitigation through its Disaster Recovery Reform Act.

Gaynor said the agency had enough full-time staff to meet demand for assistance this year but was short a few thousand "reservists."

He said FEMA has just wrapped up a review of how it trains reservists and is looking to streamline the process of qualifying new employees and putting them in the field.

Both the nominee to head FEMA and its acting administrator agreed on the need to enhance disaster preparedness across the country.

Byard, who is FEMA's associate administrator for the Office of Response and Recovery, told senators he hoped to one day make so much progress on pre-disaster mitigation to make his current position expendable.

He promised to continue to improve disaster mitigation and simplify access to aid after natural disasters. He said he would also aim to further the agency's goals of reducing the complexity of obtaining aid from FEMA.

Gaynor described the process as creating "one-stop shopping" for federal aid.

Climate change

The acting administrator dodged several questions about his own views on climate change, and the agency's lack of mentions of climate change in its strategic plan.

"We are an all-hazards agency, we respond to hazards regardless of cause," he said.

The response frustrated some Democrats, who warned that FEMA would be hampered in its preparations for future threats by not taking the effects of climate change into account.

On the other side of the Hill, earlier in the day, the director of the Homeland Security and Justice Division at the Government Accountability Office said he was concerned about the agency's ability to handle another major incident.

Chris Currie said many in his division were "hoping and praying" the country did not face additional disasters because of the strains they would cause.

Currie added a recent GAO report found that FEMA continued to have persistent problems with staff retention and lack of training, and showed a pattern of inadequate staffing in specific areas. For example, in its long-term recovery programs, the agency hires professionals such as engineers, site inspectors and cost estimators.

Those "less glamorous" jobs have been the hardest for EPA to fill and have led to delays in recovery programs, Currie said.

GAO also warned of other areas of concern, such as the need to improve the way FEMA provides services to the elderly and people with disabilities.

In Puerto Rico, GAO flagged a lack of guidance from FEMA on grants, which delayed implementation of long-term recovery projects.

He also called for the federal government more broadly to come up with a strategy for investing funds in mitigation, rather than designating funds after a disaster "so Mother Nature dictates where we invest our money."

Currie warned against considering the back-to-back Hurricanes Harvey, Irma and Maria in 2017 as an anomaly.

"The 2017 disasters were a historic year, but it would be a big mistake to look at them as one-time events. These events are happening every year, and it's important to figure out how to address these things," Currie said.

PolyMet

AP

Newly released documents detail EPA's concerns over PolyMet

<https://www.apnews.com/b275c0c0bb6a454bbe1787439ffefd11>

Steve Karnowski

MINNEAPOLIS (AP) — Environmental Protection Agency documents show that its staffers were critical of how Minnesota regulators drafted a key permit for the planned PolyMet copper-nickel mine. And they show the officials concluded the permit would violate federal law because it lacked specific water pollution limits.

The EPA released the documents after a court challenge by WaterLegacy and other groups.

WaterLegacy attorney Paula Maccabee says that while the EPA had serious concerns, they weren't reflected in PolyMet's final permit, which did not set limits for specific pollutants.

EPA staffers read one document over the phone to staff at the Minnesota Pollution Control Agency last year but never filed formal written comments expressing concerns.

The Minnesota agency said it was preparing a statement. EPA officials did not immediately respond to a request for comment.

E&E PM

EPA PolyMet comments emerge as IG investigates

<https://www.eenews.net/eenewspm/2019/06/13/stories/1060572941>

Dylan Brown, E&E News reporter

EPA's inspector general will investigate a regional office's handling of internal concerns about a copper-nickel mining project in northeastern Minnesota.

The Office of Inspector General notified Region 5 Administrator Cathy Stepp today about an audit regarding agency input on the National Pollutant Discharge Elimination System permit issued to PolyMet Mining Corp.

EPA today also released previously undisclosed written comments detailing a series of concerns among Region 5 staff about the mine's potential environmental impact. Government watchdog Public Employees for Environmental Responsibility sued to obtain those records.

Former EPA attorney Jeffery Fowley said it was his hotline complaint, in addition to a complaint from the Fond du Lac Band of Lake Superior Chippewa, that triggered the OIG audit (E&E News PM, Feb. 5).

The Boston College law professor accused Region 5 leaders of suppressing their staff's written comments, only allowing staff to read them over the phone to the Minnesota Pollution Control Agency (MPCA).

EPA has not commented on the matter, but a state court has upheld the environmental analysis of the project, which PolyMet describes as "the most comprehensive" in Minnesota's history (E&E News PM, May 28).

WaterLegacy, which has sued MPCA over the permit approval, filed a records request for the written comments. But after long delays, PEER stepped in with a Freedom of Information Act lawsuit, and Rep. Betty McCollum (D-Minn.) requested them as well (Greenwire, Feb. 19).

"Their comments were stunning," PEER science policy director and former EPA scientist Kyla Bennett said. "The fact that they were withheld from the public, it flies in the face of everything that government is supposed to stand for."

The concerns included water quality limitations and guideline calculations for pollution discharge, permit enforceability and decisionmaking procedures.

Paula Maccabee, attorney and advocacy director for WaterLegacy, said the comments underscore how serious pollution concerns are about PolyMet and that they may never have come to light without "extraordinary efforts."

"In terms of the political actors at the EPA, I find that very disillusioning," she said. "But in terms of the public servants — the career professionals — I think they acquitted themselves with real honor."

The Washington Post

Newly released documents detail EPA's concerns over PolyMet

https://www.washingtonpost.com/business/newly-released-documents-detail-epas-concerns-over-polymet/2019/06/13/b856a226-8e09-11e9-b6f4-033356502dce_story.html?utm_term=.cb894d2ea3bb

Steve Karnowski at AP

MINNEAPOLIS — Environmental Protection Agency documents show that its staffers were critical of how Minnesota regulators drafted a key permit for the planned PolyMet copper-nickel mine. And they show the officials concluded the permit would violate federal law because it lacked specific water pollution limits.

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WOTUS

Agri-Pulse

WOTUS hearing calls for more clarity from Trump administration

<https://www.agri-pulse.com/articles/12311-wotus-hearing-brings-out-supporters-detractors>

Steve Davies

Democrats, Republicans and witnesses at a Senate hearing today all agreed on the need for clean water, but disagreed on whether the Trump administration's proposed WOTUS rule is the best way to get it.

Two of the witnesses, North Dakota Ag Commissioner Doug Goehring and Wyoming producer Todd Fornstrom, president of the Wyoming Farm Bureau Federation, both said they support the proposed rule, which would reduce the scope of the federal government's jurisdiction over "waters of the U.S.," or WOTUS. The remaining witness, Pima County, Arizona, Supervisor Richard Elias, said ceding more authority over water to the states would be problematic because two-thirds of them have laws prohibiting state regulations from being more stringent than the Clean Water Act.

Goehring and Fornstrom said the proposed rule, which has drawn thousands of comments, is a good start, but more clarity is needed.

In particular, Fornstrom said the Environmental Protection Agency and Army Corps of Engineers should specify that in order for a stream to be defined as "intermittent," it must have "a minimum duration of continuous surface flow — for example, 90 days."

Under the proposal, tributaries of navigable waters would be jurisdictional if they contribute perennial or intermittent flow to those waters. The proposal also asked for comment on whether intermittent streams should even be regulated. Ephemeral streams, which contain water in response to precipitation, are already out under the proposal.

Fornstrom, who testified on behalf of the American Farm Bureau Federation, also said ditches should no longer be a standalone category of waters under the Clean Water Act. AFBF does not want to see a category of jurisdictional ditches because that "may create the misimpression that the default status of ditches is that they are jurisdictional."

"Ditches is one of those issues we need to overcome," said Sen. Jon Ernst, R-Iowa.

Goehring said he agrees with the agencies' plan to exclude most ditches and artificial channels from federal jurisdiction, but "to the extent the agencies intend to assert jurisdiction over ditches that are constructed in tributaries, they should revise the 'tributary' definition to clarify that the definition encompasses artificially created tributaries."

Goehring and Fornstrom pushed back against the argument that states will not fill gaps in authority left by the administration's new regulations, should they be finalized.

"States have intimate knowledge of their available resources, the needs of their people and industries, and are much better equipped to understand the specific and unique needs that do not fit a one-size-fits-all federal regulatory scheme," Goehring said.

He also said the agencies need to be clearer about how they define "perennial" and "intermittent" streams, suggesting they use physical indicators, not just flow regimes, in the definitions.

"On a personal level, I am deeply protective of water quality because I raised my family drinking from a well on our farm," Fornstrom said, adding "the way that we farm now is way better than it used to be."

Senators were just as divided as the witnesses. Kevin Cramer, R-N.D., led the charge for Republicans, criticizing the notion that states need the federal government as the primary regulator of waters and wetlands.

“The federal government is not the only protector of water in the country,” he said.

On the other side of the dais, Democrats said they were worried the EPA/Corps proposal goes too far in reducing federal jurisdiction.

“Under the Trump proposal, in those waters no longer defined as waters of the U.S., industries would be free to discharge pollutants as they see fit, and land developers will be able to dredge and fill upstream wetlands,” committee ranking member Tom Carper, D-Del., said. “I wonder how farmers in Delaware would feel about having to install water treatment facilities to ensure they have the clean water they need to raise healthy crops and livestock.”

Because of court decisions, the Obama administration’s 2015 WOTUS rule is in effect in 22 states but has been blocked in the remaining 28, according to the EPA. That type of patchwork could remain or take on a new pattern depending on the outcome of litigation following the publication of the Trump administration’s rule.

NBC News

Mississippi residents flooded out for four months say the EPA could save them but won't

<https://www.nbcnews.com/news/us-news/mississippi-residents-flooded-out-four-months-say-epa-could-save-n1014856>

Phil McCausland and Alex Rozier

REDWOOD, Miss. — The chest-deep water currently surrounding Stormy Deere's house is expected to remain there until at least July. The home she lives in with her husband is safely elevated on a mound of dirt and brick, but she has had to take a boat to reach it since early March.

Nothing has changed for months.

Deere, 44, loads her dogs on the boat twice a day when she must take them for walks, though she leaves the smallest one at home for fear of the alligators that live in these waters. This way of life, she said, is untenable.

“Emotionally, I have good days and I have bad days,” she said. “Some days I’m ready to go, some days I look outside and I want to despair. I want to just lie down and die. But that’s not an option.”

Record rainfall has led to the persistent flooding this year. That’s caused the Mississippi River at nearby Vicksburg to remain above flood stage, which is the water level that can cause massive flooding, for more than 114 consecutive days. That’s the longest span since 1927, according to the Mississippi River Levee Board. The water has also reached the highest level since 1973.

And while 2019 has been extreme, flooding in the Yazoo Backwater Area, as this part of the state is known, happens nearly every single year. Since 2000, there have only been five years when it hasn’t flooded here.

Mississippi River sees longest lasting flood in almost a century

Families that call this southern part of the Mississippi Delta home have put up with standing water for months. Via community meetings and social media, they have attempted to draw attention to their plight — all to little avail.

The river has now laid waste to 550,000 acres of the Mississippi Delta, including 225,000 acres of farmland, and affected more than 500 homes. But it is expected to rise again this week, entering a major flood stage, according to the National Weather Service, and those waters won't recede until at least July.

"It is unbelievable just the vastness of this, and the hundreds of homes that are flooded, and the highways that are underwater, and the hundreds of thousands of acres of farmland that are underwater," Peter Nimrod, chief engineer of the levee board, said.

Dubbed "the forgotten flood" by locals, it comes amid natural disasters that have caused billions of dollars of damage across the Midwest in the past several months and in turn claimed the national spotlight.

The difference is that in this part of the country, many residents believe there is a solution to their persistent, yearly flooding woes — if only the government would cut through the red tape to enact it. Locals like Deere believe that an unfinished Army Corps of Engineers project known as the Yazoo Pumps, a potential drain for the levee system that protects the Delta, would hold back the floodwaters that regularly threaten almost 20,000 people here.

Environmental advocates and longtime civil servants who have worked on the project, however, argue that the pumps come at a high cost, potentially draining tens of thousands of vital wetland acres that supports one of the most unique wildlife habitats in the country.

Warren County resident Mike Brown spray-painted the water tank outside of his home with a message that reads "Finish the Pumps" near Redwood, Mississippi. South Delta residents are posting this phrase around the area to appeal to lawmakers and the EPA. Warren County resident Mike Brown spray-painted the water tank outside of his home with a message that reads "Finish the Pumps" near Redwood, Mississippi. South Delta residents are posting this phrase around the area to appeal to lawmakers and the EPA. Eric J. Shelton / Mississippi Today/Report For America

The project has been debated for almost 80 years, with frustration and anger building with the passing time.

Residents of the region, local farmers and Mississippi politicians are calling for the revival of the pumps — a project vetoed by George W. Bush's administration, called "one of the worst projects ever conceived by Congress" by Sen. John McCain in 2004, and endlessly decried by environmental advocates.

Some believe the pump project could now find new life, despite unparalleled hurdles, thanks to renewed interest from the Trump administration. A few enterprising locals have even gone so far as to pitch in for two billboards that read: "President Trump, finish the pumps!"

NEWS

Closed bridges put lives and livelihoods at risk in Mississippi

As if in answer, the Trump administration announced that the Environmental Protection Agency would review the project after prodding from Mississippi's congressional delegation.

Now Deere, like many here who have suffered from the widespread flooding, wants the government to act quickly and build the pumps, despite the fears of massive environmental degradation and the four years and hundreds of millions of dollars it would require.

"No one's asking for the Delta to not flood. No one's trying to drain wetlands. No one's trying to kill the gnat or the pondberry bush. No one's trying to take away the waterfowl hunting because we duck hunt as well," Deere said. "We just want what they promised."

A silver bullet or a lie?

The pumps are a civil works project that have long loomed over this region since they were first proposed and authorized in 1941. Though they were never built, plans for the pumps were reviewed by the Corps in every ensuing decade except the 1970s — often at the direction of Mississippi politicians.

That still holds true.

Both Mississippi senators — Republicans Cindy Hyde-Smith and Roger Wicker — as well as Rep. Bennie Thompson, a Democrat who represents the Delta region, and Republican Gov. Phil Bryant have recently voiced their support for the pumps. It's also a topic in a tight Mississippi governor's race.

"It's like the third rail of Mississippi politics: You have to be for the pumps."

"It's like the third rail of Mississippi politics: You have to be for the pumps," said Leonard Shabman, a water and environmental researcher who has worked with the Corps and the EPA on the pumps since the 1980s.

Now Mississippi politics has pushed the current administration to act, many noting that there are 22 federally funded pumps within 200 miles of the Yazoo Backwater area. Every levee system in the lower Mississippi Valley has a pump plant except here.

The levees at these different sites create a bowl shape, and during high-flood events, those bowls begin to fill with water. A pump, the Mississippi Levee Board said, is the only effective way to help drain that water away and is necessary in this region.

Governor Phil Bryant holds a press conference at the Mississippi National Guard's Army Aviation Support Facility after his aerial tour of the Mississippi River/Backwater Flooding on April 3, 2019. Governor Phil Bryant holds a press conference at the Mississippi National Guard's Army Aviation Support Facility after his aerial tour of the Mississippi River/Backwater Flooding on April 3, 2019. Eric J. Shelton / Mississippi Today/Report For America

An EPA spokeswoman said in an email that the agency has noted the "economic and disruptive impacts" of the Mississippi flooding and planned to find solutions.

"The Agency strongly supports the goals of improved flood protection and wetland protection for the residents of the Mississippi Delta," she wrote. "EPA will work with the Corps and the local Levee Board to review updated data and other information as it relates to our regulatory programs and oversight."

The discussion of pumps appears to arise whenever the area faces intense flooding, but environmental protection advocates and former civil servants who worked on the issue for decades didn't think it would come up again after the EPA, under the Bush administration, vetoed the pumps in 2008.

Conservationists say the Delta's bottomland hardwood wetlands create one of the most important ecosystems in the country. Twenty percent of the nation's ducks, 450 different species, including 257 species of birds, rely on these wetlands' natural resources.

They could be devastated by the pumps, according to the EPA's veto, which said that 67,000 acres of wetlands could be drained if the pumps were installed. The agency also commissioned a report prepared by Shabman during his tenure at Virginia Tech that concluded that even if the pumps could guarantee that the area would never flood again, the amount of money saved is "far below what would be necessary to ... justify such a project."

Many who have long followed the case say the pumps are a pipe dream

Now, after the veto, it would likely take an act of Congress to authorize the pumps that are expected to cost north of \$300 million. That or the unlikely prospect of overturning an EPA veto, something that has never been done before and would likely lead to a lengthy court battle with environmental advocates.

Considering those requirements, many who have long followed the case say the pumps are a pipe dream

"There are layers of reasons why this is a bad project," said Melissa Samet, senior counsel at the National Wildlife Federation, who has followed the project for decades, "but worst of all is it really gives a false promise of hope to people who are suffering from flooding."

Unexplored alternatives

Jack Branning, 87, has owned his 2,500 acres of land next to the Delta National Forest since 1996. He said there's 5 to 10 feet of water on parts of his property now, but flooding has been a persistent problem for him since he started farming in the area.

The floodwaters have gotten exceptionally high 10 of the last 11 years, he noted.

Because of those rising waters, Branning entered his property into the Wetlands Preserve Program in 1999, which provides him compensation for the land that he can't farm if he allows it to be reforested.

"We did that because the program added value, in my opinion, to the land because the land had been cleared and being farmed unsuccessfully numerous years," he said. "It may do okay for two years and then in two years the high water comes and it didn't do very well. We farmed it for three years, I did, and it didn't do very well."

Branning said he's happy that it's helping the environment and noticed that some wildlife has returned, which is good for him as a hunter. Nevertheless, while Branning thinks he's better off than his neighbors, he still supports the pumps.

The barn located on Stormy Deere's property, located near Redwood, Mississippi, is surrounded by water due to the heavy flooding in the Mississippi Delta. The barn located on Stormy Deere's property, located near Redwood, Mississippi, is surrounded by water due to the heavy flooding in the Mississippi Delta. Eric J. Shelton / Mississippi Today/Report For America

"I try to see everybody's point of view," he said. "It all depends I guess on how you view the world. In the case of the backwater, I view the pumps as something that should have been done."

Buyouts, wetland reforestation and raised homes and roadways are ideas proposed by Shabman in another report that he produced for the EPA about potential alternatives. Environmental advocates, however, claim local leaders were never curious to explore such ideas because they didn't come with expensive construction contracts benefitting a small number of people in Mississippi.

Because of the environmental and financial costs, Grumbles said that the EPA moved forward with the veto in 2008 to clear the way for federal agencies to explore new solutions.

SCIENCE

Three islands disappeared in the past year. Is climate change to blame?

"Alternative, nonstructural flood control measures and measures that didn't involve the large pumps (which would drain so many wetlands) never got much traction so the only solution at the time was to use the veto pen and commit to work with the Corps, the levee board, and impacted communities in the future on a more acceptable project," Grumbles said in his statement.

Still, nothing constructive happened in the decade that followed the veto. And because of the project's expense, Shabman added, it is unlikely the pumps would ever have received funding anyway.

"The veto just made the thing end. No one picked up an alternative. No one said, 'What else can we do?'" he said.

Shabman also thinks there's little hope for the Trump administration to come up with an answer.

"If you look at what could be done between FEMA, EPA, USDA, the Corps and others, it's possible you could do something that passes muster with the current authorization that would pass Congress and actually get funded," he said. "But I'm not sure there's that much creativity in this administration."

The debate matters little, however, to the people of the Mississippi Delta whose homes are now gone, damaged or under threat.

Mike Brown, a longtime resident who works as a trucker and farms corn and soybean on 700 acres near Redwood, said these alternatives ignore the simple fact that the place he calls home is now gone.

Four feet of water occupies Brown's house right now, and he said he's lost thousands of dollars renting a house south of Vicksburg for four months. In the meantime, he's only received \$500 from the Mississippi Emergency Management Agency since he had to flee his home and abandon part of his livelihood.

"We just need the government to finish what they started, finish the pumps," said Brown, who recently found a casket floating in the floodwaters. "The flooding seems to get worse every year. It's really damaging our livelihood, I've also got cattle, I do a little farming. It's damaged everything that it can damage."